BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA AND THE CALIFORNIA ENERGY COMMISSION

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006) Energy Commission Docket 07-OIIP-01

COMMENTS OF PACIFICORP (U 901 E) ON ISSUES RELATED TO THE DISTRIBUTION OF GREENHOUSE GAS (GHG) EMISSIONS ALLOWANCES

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Pursuant to the *Administrative Law Judge's Ruling Requesting Comments and Noticing Workshop on Allowance Allocation Issues* dated October 15, 2007, PacifiCorp respectfully submits these comments addressing issues related to the distribution of greenhouse gas ("GHG") emission allowances. PacifiCorp has actively participated in these proceedings, including the June 22, 2007 California Energy Commission workshop discussing these issues. PacifiCorp appreciates the opportunity to provide further comments in this proceeding on these important issues.

I. INTRODUCTION

PacifiCorp is one of the West's leading utilities, serving more than 1.6 million customers in six western states (California, Idaho, Oregon, Utah, Washington, and Wyoming). PacifiCorp also has ownership interests in thermal generation units located in three additional western states (Arizona, Colorado, and Montana). In California, PacifiCorp serves approximately 46,500 customers in Del Norte, Modoc, Shasta and Siskiyou counties. PacifiCorp has more than 10,400 megawatts of generation capacity on a system-wide basis from coal, hydro, wind power, natural gas-fired combustion turbines, solar and geothermal.

PacifiCorp respectfully requests that the Commission carefully consider the impact of its GHG rules on PacifiCorp and other small multi-jurisdictional utilities (collectively, "SMJUs"). The combination of utility-owned generating resources and resources providing contracted for power located throughout the western United States, coupled with load-serving responsibilities and multi-state cost structures, places SMJUs in the complicated position of having to equitably assign the costs of system energy, including emissions/allowances, to each state's retail load. The Commission has recognized the unique implementation issues facing SMJUs, most notably within the Renewable Portfolio Standard Program, R.06-02-012. Unlike large California investor-owned utilities, PacifiCorp's generating assets and power purchases are not used exclusively to serve California retail load and PacifiCorp does not rely significantly on unspecified power purchases.

II. DISCUSSION

The Ruling requests responses to several specific questions related to the distribution of GHG emission allowances, which PacifiCorp outlines below in the order in which they were presented. Importantly, PacifiCorp respectfully requests that the Commission not perceive the absence of comments by PacifiCorp on any specific issue or other matter as a conclusive indication of PacifiCorp's lack of interest with respect thereto. PacifiCorp acknowledges the ongoing nature of this proceeding and reserves the right to present additional comments at a future time, as necessary.

Q1. Please comment on each of the [evaluation] criteria listed by the MAC. Are these criteria consistent with AB 32? Should other criteria be added, such as criteria specific to the electricity and/or natural gas sectors? In making trade-offs among the criteria, which criteria should receive the most weight and which the least weight?

a. Reduces the cost of the program to consumers, especially low-income consumers,

PacifiCorp's California customer base is limited and includes a significant proportion of low-income customers. Further, PacifiCorp's service territory lacks relatively large industrial customers. Collectively, these factors mean that PacifiCorp's residential customers will likely bear a disproportionate burden for funding the acquisition of GHG emission allowances, as compared to other California investor-owned utility service territories. PacifiCorp respectfully requests that the Commission carefully consider the impacts of GHG emissions allowances mechanisms on customers served by SMJUs. For SMJUs, we believe this criterion should receive significant weight.

b. Avoids windfall profits where such profits could occur,

PacifiCorp concurs with the observation made by the MAC that granting free allowances to load serving entities that are closely regulated or municipally owned does not present a risk of windfall profits "… since these entities are likely to be obligated to pass the value of freely allocated allowances through to their ratepayers." MAC report, page 56. PacifiCorp supports the allocation of free allowances to load serving entities regulated by the Commission and at the June 22, 2007 public workshop requested the Commission articulate "what [it] believes is their ability to prevent windfall profits under a grandfathered, allowance allocations mechanism." *Transcript of Joint Agency Workshop of the California Energy Commission/ California Public Utilities Commission* at 147 (June 22, 2007). For all California utilities, this criterion should receive significant weight.

c. Promotes investment in low-GHG technologies and fuels (including energy efficiency),

At PacifiCorp, it is possible to get to a low carbon future, but only with substantial and consistent investment in technology advancement, the right policy choices and a realistic timeline. This belief is based primarily on concepts developed by the Electric Power Research Institute ("EPRI") and described within their recently released study "The Power to

Reduce CO_2 Emissions: The Full Portfolio."[1] EPRI describes a technology path for the electricity sector to return to 1990 emissions levels by 2030. Domestically, this will require the long-term commitment of billions of dollars in energy research, development and deployment in every aspect of electric generation, transmission and consumption. EPRI establishes specific technology deployment targets in seven areas: efficiency, renewables, nuclear generation, advanced coal generation, carbon capture and storage (CCS), plug-in hybrid electric vehicles (PHEV) and distributed energy resources. The most encouraging aspect of the study is that, as we move toward 2030, emissions levels can begin falling fairly dramatically and the potential of some of the more dire predictions of climate change can be minimized.

To the extent GHG emission allowance are auctioned, substantial and consistent investment in GHG technologies should receive significant weight. Auction proceeds can support electricity sector technology advancement, such as that identified by EPRI, and is critical to achieving long-term GHG emission reduction goals.

d. Advances the state's broader environmental goals by ensuring that environmental benefits accrue to overburdened communities,

As discussed previously, PacifiCorp's service territory lacks relatively large industrial customers. The environmental co-benefits considered by the MAC, when discussing this particular criterion, are perhaps more germane to communities where significant criteria pollutant or toxics emissions challenges exist. For SMJUs, this particular criterion could receive less weight.

e. Mitigates economic dislocation caused by competition from firms in uncapped jurisdictions,

Unlike most other California investor-owned utilities, PacifiCorp is a vertically-integrated utility, owning approximately 80 percent of its generation portfolio. If GHG emission

[1] See, http://epri-reports.org/DiscussionPaper2007.pdf

allowances are allocated for free and based upon historical emissions, PacifiCorp would be in a better position to mitigate the costs of the carbon policy to PacifiCorp's California customers, subject to proper regulatory oversight by the Commission. To the extent allowances are auctioned or allocated under a first-seller approach, PacifiCorp would likely always be a significant buyer of allowances. PacifiCorp's service territory already lacks large industrial customers, so the result would be increased difficulty in attracting economic development within PacifiCorp's communities as compared to uncapped jurisdictions, rather than preventing economic dislocation. For SMJUs, the risks are disproportionately higher compared to other locations within the state, so this particular criterion should receive greater weight.

Another strategy the Commission should consider in order to mitigate adverse economic impacts would be to recommend California adopt a cap-and-trade rule accepting carbon offsets, from outside the electricity sector and with no geographic restrictions, to be used for compliance purposes in lieu of GHG emission allowances. At a minimum, California should accept carbon offsets generated in the same states from which California counts GHG emissions under its rule.

f. Avoids perverse incentives that discourage or penalize investments in low-GHG technologies and fuels (including energy efficiency),

As a vertically integrated utility the decision on how emissions allowances are allocated will have a much different effect on PacifiCorp and its customers than on other California investor-owned utilities. The issue is a utility's ability to pace the declining rate of a utility's carbon emissions (or conversely the ability to control the rate at which carbon compliance costs increase), either by managing a freely allocated pool of GHG emission allowances, entering the market to purchase additional allowances, or the making of capital investment decisions such as retiring existing units or adding newer lower carbon generation.

Utilities that have largely divested themselves of fossil generation (not because of carbon constraints, but, rather, because of other state policies) face much different risks

compared to utilities that still own their fossil generation. It is a false argument to conclude that if allowances are allocated freely and based upon historical emissions, it necessarily means low-GHG technologies and fuels are somehow discouraged or penalized. Rather, the effect is on timing and the electricity rates utility customers would be expected to pay for new investments in low-GHG technologies and fuels. Since carbon dioxide (CO_2) emissions control equipment for existing fossil generation either does not yet exist or is not commercially available, compliance would translate into mothballing existing units before the end of their useful life (i.e., stranded costs) and the construction or procurement of new low-GHG resources. These rate impacts could be tempered by energy efficiency and demand-side management, but not solved by them.

For vertically integrated utilities, such as PacifiCorp, the risks to PacifiCorp's customers are disproportionately higher compared to the customers of other California utilities who have already divested themselves of fossil generation. Those deregulated utilities have had, for several years, the ability to contract away any potential stranded cost risk, while also placing new construction risk squarely on independent generators competing for their business. Also, GHG emissions reductions per megawatt-hour of energy delivered to an SMJU's California customers that are achieved at facilities outside of California should qualify as tradable GHG offset emissions apportioned to California load. As such, this particular criterion should receive greater weight for vertically integrated utilities who still own their fossil generation.

g. Provides transition assistance to displaced workers, and

PacifiCorp supports the use of some auction proceeds to provide transition assistance to displaced workers for the reasons expressed within its response to Question 1a.

h. Helps to ensure market liquidity.

PacifiCorp testified during the June 22, 2007 public workshop that it supports some nominal level of auction to "ensure some sort of market liquidity so that you do, actually see some opportunity for trading." *See Transcript of Joint Agency Workshop of the California*

Energy Commission/ California Public Utilities Commission at 153 (June 22, 2007). For all California utilities, this criterion should receive significant weight.

Q2. Broadly speaking, should emission allowances be auctioned or allocated administratively, or some combination?

Please see responses to Question 1e, 1f, and 1h. Also, this question should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3). As a example, the proposed Oregon load-based CO_2 cap-and-trade rule developed by Governor Kulongoski's Carbon Allocation Task Force ("CATF")[2] recommended "Allowances would be distributed in two ways: 1) allocated for free; and 2) auctioned. Each [load serving entity] would have a baseline equal to its base-period average emissions for the period 2002-2006, as discussed above. Total allowances issued for 2009-2011 would equal the sum of [load serving entity] baselines. The baseline would decline beginning in 2012. The state would initially allocate 95 percent of the baseline each year to the LSEs for free." Median Proposal, page 3. The Oregon CATF also relied on Portland State University to model the potential rate impacts of the proposed model rule.[3] Such an approach should also be modeled by the Commission.

Q3. If you recommend partial auctioning, what proportion should be auctioned? Should the percentage of auctioning change over time? If so, what factors should be used to design the transition toward more auctioning?

Please see response to Question 1h. Also, if an auction scheme is adopted it should guard against rate shock by transitioning gradually. California should model the rate impacts of auctioning a minimum of five percent of the total GHG emission allowance budget each year, divided between two auctions a year. The California Air Resources Board could

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[2] "Summary of the Median Proposal for an Oregon Carbon Allocation Standard" December 15, 2006; page 3 (available at http://www.oregon.gov/ENERGY/GBLWRM/docs/CATF_Proposal.pdf)

[3] See, http://www.oregon.gov/ENERGY/GBLWRM/docs/CATF_Report-HalNelson-Final.pdf

increase the percentage of auctioned allowances by rule to up to a capped percentage, such as 10 percent, by petition of a regulated entity that there is substantial cause to increase the percentage. The exact percentage should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q4. How should new market entrants, such as energy service providers, community choice aggregators, or (deliverer/first seller system only) new importers, obtain emission allowances, i.e., through auctioning, administrative allocation, or some combination?

PacifiCorp supports some nominal amount (< 3 percent) of the overall GHG emission allowance cap being set aside each year for new market entrants prior to the distribution of the allowances. PacifiCorp recommends that a load-based CO_2 cap-and-trade rule include a specific provision for new entrants, such as new self-generators who had not been previously served by a load serving entity, where the state would hold a "new entrant" GHG emission allowance set-aside each year. At the end of each year, the state would pro-rate any unused "new entrant" allowances to the regulated entities. The California Air Resources Board would set the size of the allowance pool in rule. Also, the exact amount should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3), with input provided by experts on projected statewide electricity load growth and new resource development needs.

Q5. What are the important policy considerations in the design of an auction?

Artificial scarcity is the most important policy consideration when designing an auction. Where GHG emission allowances are auctioned, there is a risk of, and, indeed, an incentive for, non-generators bidding to acquire allowances. Financial speculators could participate, hoping to acquire allowances cheaply and sell them to companies that need them to operate at a higher price. The risk alone could drive up the bid price in these auctions. As the cost of acquiring allowances eventually will be passed on the California electricity consumers,

market manipulation that drives up the cost of allowances, the supply of which will be limited, should be prevented.

Restricting auction participation is the most direct way to address this risk. Rules for bidders could include either currently being a first-seller of electricity in California, having a pending application for a California-based generation unit, or being able to show to the satisfaction of regulatory staff that they have a good faith and reasonable expectation that they will be a first seller in California during the compliance period for which the allowances apply—coupled with administrative/criminal penalties if they are shown not to have pursued such plans in good faith during the compliance period.

As a point of reference, the proposed Oregon load-based CO_2 cap-and-trade rule developed by the Oregon CATF recommended "Only covered entities or joint operating agencies of [community owned utilities] could participate in the auction. The auction would set one final price for all allowances in that auction. [Community-owned utilities], [electricity service suppliers] and self-generators would have first-in-line access to allowances for each auction. Giving smaller entities first-in-line recognizes that they might have a harder time competing for allowances in an auction. Because these entities' needs are small, having them go first does not significantly disadvantage the large [load serving entities] … The amount needed by specific [load serving entities] for "first-in-line" allowances would be determined by rule. [Investor-owned utilities] would have access to the remainder of allowances at the same price." Median Proposal page 3. Such an approach should be modeled by the Commission. PacifiCorp supports either limiting or heavily regulating the types of participants in an auction to prevent possible GHG emission allowance hoarding, especially by market participants with significant financial resources, but no compliance obligations. PacifiCorp also supports the consideration of "first-in-line" allowances for SMJUs.

Q6. How often should emission allowances be auctioned? How does the timing and frequency of auctions relate to the determination of a mandatory compliance period, if at

all?

PacifiCorp supports having two auctions per year. The exact amount should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3). A second auction scheduled for later in a calendar year would allow regulated entities an opportunity to either acquire additional or sell surplus GHG emissions allowances as their circumstances dictate.

On the second part of the question, PacifiCorp does not believe the timing and frequency of auctions necessarily relates to the determination of a mandatory compliance period. However, a regulator could "borrow" GHG emission allowances from a future compliance period and either auction them to generate near term revenue or distribute them freely to regulated entities as a credit for early action. An example of a creditable early action would be investments in CCS technology operated prior to an emissions cap. Both "borrowing" proposals should be modeled by the Commission.

Q7. How should market power concerns be addressed in auction design? If emission allowances are auctioned, how would the administrators of such a program ensure that all market participants are participating in the program and acting in good faith?

Please see response to Question 5. Also, California should adopt a GHG emission allowance banking provision, whereby an owner could "bank" any surplus allowance for use within a future compliance period; however auctioned allowances should have an identified expiration date, such as two to three years from the date of auction. Such a rule would ensure market liquidity. A "banking" rule should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q8. What criteria should be used to designate the types of expenditures that could be made with auction revenues (including use to reduce end user rates), and the distribution of money within those categories?

Please see response to Question 1c. PacifiCorp supports using the funds generated by an auction for:

- Energy efficiency;
- Renewable and other zero carbon generation;
- Costs of improved efficiency at existing fossil-fuel power plants and transmission systems owned by load-serving entities that are in excess of the value of fuel savings, increased capacity or other economic benefits;
- Carbon capture and sequestration projects, including pipelines for sequestration;
- Carbon-related research, development, and demonstration projects; and
- Carbon offsets.

PacifiCorp also supports a provision whereby the California Air Resources Board would have the option to direct some percentage of the funds to support broad programs that would achieve CO_2 reductions in the state, but not necessarily directed at a particular load serving entity, e.g. market transformation. There could different treatment for the portion of auction revenues that would have flowed back to self-generators and electricity service providers, but that process would be developed by rule.

Funds other than those reserved for broad programs would be distributed proportionately to load serving entities or joint operating agencies (for community-owned utilities) per their respective share of the base-period emissions. The percent of funds for statewide programs could go to a non-governmental organization or be distributed through a request for proposal. Either way, there would be a requirement that the funds be spent on programs that reduce GHG emissions from load-serving entities.

Q9. What type of administrative structure should be used for the auction? Should the auction be run by the State or some other independent entity, such as the nonprofit organization being established by the Regional Greenhouse Gas Initiative?

PacifiCorp prefers an administrative structure that minimizes transactional costs to participants in the auction. To the extent it could be accomplished by either a state agency or a nonprofit, PacifiCorp does not have a preference.

Q10. If some or all allowances are allocated administratively, which of the above method or methods should be used for the initial allocations? If you prefer an option other than one of those listed above, describe your preferred method in detail. In addition to your recommendation, comment on the pros and cons of each method listed above, especially regarding the impact on market performance, prices, costs to customers, distributional consequences, and effect on new entrants.

PacifiCorp has testified in support an allocation of GHG emission allowances based upon the "grandfathering" or historical emissions method. The decisions to build fossil power plants, which were made over many decades and were intended to achieve a fuel mix, were economically rational and in virtually all cases approved as prudent by regulatory authorities. Load serving entities should not be punished for past prudent decisions. *See Transcript of Joint Agency Workshop of the California Energy Commission/ California Public Utilities Commission* at 150-151 (June 22, 2007).

PacifiCorp does not support providing GHG emission allowances to non-emitters based on a "benchmarking" or megawatt-hour output-based methodology. It will simply create large wealth transfers unrelated to the overall goal of emissions reduction. It is unclear what public purpose would be served by distributing allowances to non-emitters. Companies that built hydroelectric dams many decades ago or nuclear plants in the sixties and seventies did not do so to avoid CO_2 emissions and there is no reason to provide them with a financial windfall.

PacifiCorp would also observe that the method for distributing GHG emission allowances can be different between one utility and another, or even among groups of similarly utilities. Since it is problematic to trace the origin of electricity delivered to California from an SMJU's out-of-state resources, allowances should be distributed accordingly to the same pro rata

share of GHG emissions from the SMJU's multi-state system that California retail sales bears to system retail sales. The method for distributing emissions allowances to SMJUs should differ from the larger investor-owned utilities because of PacifiCorp's ownership of fossil generation, PacifiCorp's service territory demographics, and customer rate impacts.

Q11. Should the method for allocating emission allowances remain consistent from one year to the next, or should it change as the program is implemented?

PacifiCorp testified during the June 22, 2007 public workshop to its reservations with an "updating" method of GHG emission allowance allocation because of the uncertainty it creates with new resource planning. *See Transcript of Joint Agency Workshop of the California Energy Commission/ California Public Utilities Commission* at 199-200 (June 22, 2007). Since the cap would be declining over time, a regulated entity's ability to forecast its compliance obligations and risk exposure would be frustrated by an ever changing regulatory landscape. A cap can change (i.e., decline, be reduced to accommodate auctions, new market entrants, and etcetera), but a regulated entity's share of the original GHG baseline (i.e., its ratio compared to the other regulated entities) should remain constant for operational and capital project planning purposes.

PacifiCorp also testified in support of an approach which would gradually phase out the free distribution of grandfathered GHG emission allowances to an auction. *See Transcript of Joint Agency Workshop of the California Energy Commission/ California Public Utilities Commission* at 197-198 (June 22, 2007). To reiterate, such a phase out must be done gradually to guard against rate shocks. A transition from a grandfathered method to an auction should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q12. If new market entrants receive emission allowance allocations, how would the proper level of allocations be determined for them?

Please see response to Question 4. It is reasonable for California to withhold a

defined amount of GHG emission allowance as a new entrant set-aside each year. At the end of each year, the state would pro-rate (based upon each regulated entity's share of the initial GHG baseline) the unused allowances back to the regulated entities. Different set asides for new market entrants should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q13. If emission allowances are allocated based on load/sales, population, or other factors that change over time, how often should the allowance allocations be updated?

Please see response to Question 11. PacifiCorp does not support a change to a regulated entity's GHG allowance allocation methodology after its share of the initial GHG baseline has been calculated (i.e., its ratio to the GHG baseline). Rather, if additional allowances are needed for other market purposes they should be taken directly from the GHG emission allowance budget/cap. This is the most equitable and least controversial approach for all market participants.

Q14. If emission allowances are allocated based on historical emissions ("grandfathering") or benchmarking, what base year(s) should be used as the basis for those allocations?

Using the most recent emissions data is important. PacifiCorp supports calculating a statewide GHG baseline using multiple historical years. A baseline should rely on historical CO_2 emissions data from all covered sources, using data from a five year period prior to the rule's effective start date. California would drop data from the years with the highest and lowest emissions for each load serving entity. Average emissions for the three remaining years would form the basis for distributing GHG emission allowances to each load serving entity. The sum of all load serving entities' GHG baseline emissions would establish the GHG baseline, with each regulated entity's three-year average emissions used to calculate its share (or ratio) of the initial GHG baseline and each subsequent cap.

When establishing a GHG baseline, evaluating a larger number of years allows

the state to more equitably address year-over-year hydro production variability and accommodate unit-specific concerns such as reduced emissions as a result of scheduled maintenance or unscheduled outages. Different GHG baseline methodologies should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q15. If emission allowances are allocated based initially on historical emissions ("grandfathering"), should the importance of historical emissions in the calculation of allowances be reduced in subsequent years as providers respond to the need to reduce GHGs? If so, how should this be accomplished? By 2020, should all allocations be independent of pre-2012 historical emissions?

The challenge is three-fold: (1) how to avoid creating stranded assets; (2) how to meet new electricity load; and (3) knowing when GHG emission control equipment will be commercially available. Until electricity load growth can be reduced and/or new lower GHG technologies and fuels brought online, it will be in the ratepayers' interest to keep the existing fossil generation stock online. Marginal fossil generating units will be retired over time as the allocation of GHG emission allowances declines (i.e., as the overall GHG cap declines or as more GHG emission allowances are auctioned). PacifiCorp does not believe a regulated entity's share of the cap should be revisited (i.e., its ratio of the GHG cap compared to other regulated entities); rather the amount available for grandfathered GHG emission allowances could decline in favor of an auction.

PacifiCorp does not support 2020 GHG emission allowances being entirely independent of the original methodology. Rather, the issue should be how much of the GHG cap should continue to be freely allocated in order to guard against rate shocks. Different GHG emissions allowance distribution methods (grandfathered versus auction) and their impact on customer rates should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Lastly, PacifiCorp would also observe that the method for distributing GHG

emission allowances can be different from one utility to another, or even among groups of utilities. The method for distributing GHG emission allowances to SMJUs should differ from the larger investor-owned utilities because of PacifiCorp's ownership of fossil generation, PacifiCorp's service territory demographics, and customer rate impacts.

Q16. Should a two-track system be created, with different emission allowances for deliverers/first sellers or retail providers with legacy coal-fueled power plants or legacy coal contracts? What are the factors and trade-offs in making this decision? How would the two tracks be determined, e.g., using an historical system emissions factor as the cut-off? How should the allocations differ between the tracks, both initially and over time? What would be the market impact and cost consequences to consumers if a two-track method were used?

PacifiCorp supports having a method for distributing GHG emission allowances that differs among groups of utilities. Different methods could be based upon historical emissions, utility generation ownership, legacy contracts, customer demographics, and projected customer rate impacts. The differences between utilities and the California's method for allocating allowances would diminish as an auction method is phased in. Different allocation methods and their impact on customer rates should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q17. If emission allowances are allocated administratively to retail providers, should other adjustments be made to reflect a retail provider's unique circumstances? Comment on the following examples, and add others as appropriate:

a. Climate zone weighting to account for higher energy use by customers in inclement climates, and

PacifiCorp does not necessarily believe climate zone weighting should be

considered. For example, customers located in the desert may have higher energy use during certain times of the year, but may also have a greater opportunity to develop solar and wind resources.

b. Increased emission allowances if there is a greater-than-average proportion of economically disadvantaged customers in a retail provider's area.

Energy consumers, particularly lower income Americans who spend a disproportionately large percentage of their incomes on energy, will ultimately bear the costs of making the dramatic transformation needed to transition from a carbon-based economy. These costs are likely to include paying higher overall energy prices (not just energy from fossil fuels) as well as potential job losses if carbon-intensive industry relocates overseas in areas without carbon restraints.

As stated earlier, PacifiCorp's California customer base is small and includes a significant proportion of low-income customers. Further, PacifiCorp's service territory lacks relatively large industrial customers. Collectively, these factors mean that PacifiCorp's residential customers will likely bear a disproportionate burden for funding the acquisition of GHG emissions allowances, as compared to other California investor-owned utility service territories. It may be reasonable to increase GHG emission allowances if there are a greater-than-average proportion of economically disadvantaged customers in a retail provider's area or a disproportionably higher impact on customer rates compared to other areas of the state. PacifiCorp encourages the Commission to develop such a proposal.

Q18. Should differing levels of regulatory mandates among retail providers (e.g., for renewable portfolio standards, energy efficiency investment, etc.) be taken into account in determining entity-specific emission allowance allocations going forward? For example, should emission allowance allocations be adjusted for retail providers with high historical investments in energy efficiency or renewables due to regulatory mandates? If those

differential mandates persist in the future, should they continue to affect emission allowance allocations?

PacifiCorp does not support providing additional GHG emission allowances based upon a utility's past compliance with various regulatory mandates. It will simply create wealth transfers unrelated to the overall goal of achieving new, additional GHG emission reductions. It is unclear what public purpose would be served by distributing allowances to utilities that as a result of past regulatory mandates, often unrelated to the goal of avoiding or reducing CO_2 emissions, added renewables or invested in energy efficiency.

PacifiCorp does not support a change to a regulated entity's GHG emission allowance allocation methodology after its share of a GHG baseline has been calculated (i.e., its ratio to the cap). Rather, PacifiCorp supports the Commission adopting a policy that eliminates the various historical mandates in favor of allowing a utility to pursue a generation portfolio strategy with carbon-equivalent savings as the unifying principle. All new actions that result in such savings would contribute to carbon emissions reduction goals, thus providing an incentive for a utility and its customers to undertake what are now generally unrecognized beneficial carbon-reducing acts.

Q19. How often should the allowance allocation process occur? How far in advance of the compliance period?

PacifiCorp supports a GHG emission allowance allocation annually matching the GHG baseline for the first three years of the cap-and-trade program, and then an annual GHG emission allowance allocation matching the declining cap. For planning purposes, the individual regulated entity's emission allowance allocation methodology (i.e., its ratio of the GHG baseline and subsequent caps compared to other regulated entities), should never be changed, but the forecasted cap available for grandfathered GHG emission allowances could be adjusted periodically. Different rates at which the GHG cap declines should be the subject of modeling to be performed by Energy and Environmental Economics, Inc. (E3).

Q20. What are the distributional consequences of your recommended emission allowance allocation approach? For example, how would your method affect customers of retail providers with widely differing average emission rates? Or differing rates of population growth?

Please see response to Question 16.

Q21. Would a deliverer/first seller point of regulation necessitate auctioning of emission allowances to the deliverers/first sellers?

SMJU's have unique and complicated positions compared to other utilities and power generators under the "first-seller" approach and the Commission and the California Air Resources Board should develop unique rules to accommodate SMJU's. PacifiCorp owns a significant amount of its generation. PacifiCorp also does not rely heavily on market purchases from within California. Under a first-seller approach, PacifiCorp would be obligated to secure GHG emission allowances for both its generation and contracted power, the majority of which are located and deliver energy to PacifiCorp's multi-state system outside of California. The financial risk from competing in an allowance auction is relatively much greater compared to other California investor-owned utilities because many have divested themselves of fossil generation. Thus they can more easily support an auction, including proposals where the utilities, rather than the State, administer the auction and relies on the proceeds to fund utility programs. In PacifiCorp's case, it would be absurd to require it to conduct an auction, when it would be the principle bidder.

An auction is not absolutely necessary for SMJUs. Auctioning of GHG emission allowances would not be necessary because allowances could be allocated to SMJUs using the grandfathering method. If an auction method is adopted as the preferred method for distributing allowances, it should be phased in gradually to guard against rate shocks.

Q22. Are there interstate commerce concerns if auction proceeds are obtained from all deliverers/first sellers and spent solely for the benefit of California ratepayers? If there are legal considerations, include a detailed analysis and appropriate legal citations.

The MAC Report's suggests that auctioning GHG emission allowances would provide funds that could be used for "transition assistance for workers and industries subject to strong market pressures from competitors operating in jurisdictions that lack similar caps on [GHG] emissions." Although the MAC Report is not clear precisely which industries would benefit, such financial assistance to in-state first sellers would violate the dormant commerce clause by essentially taxing out of state businesses and distributing benefits to in-state businesses.

The dormant commerce clause prohibits state and municipal regulations that discriminate against out-of-state parties or unduly infringe upon interstate commerce. A regulation violates the dormant commerce clause where it "discriminates on its face against interstate commerce." *United Haulers Association v. Oneida-Herkimer Solid Waste Management Authority*, 127 S.Ct. 1786, 1793 (2007). By discrimination, the Court "means the differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* citing *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore.*, 511 U.S. 93, 99 (1994).

In *United Haulers*, the Court noted that a key indicator of economic protectionism is where "substantially similar entities" are treated differently based on whether they are in-state or out-of-state. *Id.* at 1795. The Supreme Court distinguishes between "flow control ordinances" that direct benefits to private entities and those that direct benefits to public entities. The Court has ruled that when a regulation impacts out-of-state businesses and the benefits of that regulation are directed toward competing in-state businesses, then the regulation is discriminatory and violates the dormant commerce clause. *Id.* (*United* Haulers involved a flow control ordinance benefiting a public entity, which the Court differentiated from its decisions on ordinances benefiting private entities); citing and differentiating from *C&A Carbone, Inc. v.*

Clarkstown, 511 U.S. 383, 114 S.Ct. 1677.

If California were to direct revenues from GHG emission allowance sales to in-state first sellers, in essence returning to them some portion of their own payments for such GHG emission allowances, that would discriminate directly against out-of-state first sellers, who had to purchase allowances, but got none of such payments back through "assistance" from California. Where revenues generated by requiring out-of-state sellers to purchase allocations are given to their in-state competitors, we certainly have "substantially similar entities" being treated differently. The motivation behind the distribution is clearly economic protectionism—to aid in-state businesses in competing against out-of-state businesses. The MAC Report asserts that the distributions are made in order to offset the costs GHG emissions regulations that out-of-state businesses do not face, yet out-of-state businesses selling energy in California will incur costs just as Californian businesses. It would be economic protectionism to use proceeds from the sale of energy in California to benefit only California businesses when out-of-state parties will face the same costs.

Additionally, depending upon the final form, the "first-seller" approach may impact energy rates for consumers outside of California. If the regulations that are adopted "regulate extraterritorially," then such regulations may violate the dormant commerce clause. *See, e.g. Healy v. The Beer Inst.,* 491 U.S. 324, 335-40 (1989). The dormant commerce clause precludes states from regulating outside the state's borders. The Supreme Court employs a three-prong test for determining whether a state law is impermissibly extraterritorial:

> First, the 'Commerce Clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State . . . . Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the

> legislature. . . . Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statue may interact with the legitimate regulatory regimes of other states and what effect would arise if not one, but many or every, State adopted similar legislation. *Healy,* 491 U.S. at 336-37; *as quoted by* Pann, 2005 Duke L. & Tech. Rev. 0008.

Also, California rules have a much greater potential to affect the costs of customers in the remaining SMJU states. First, the additional costs of compliance with a "first-seller" approach may impact consumers in other states unless the system is designed to compliment existing cost structures of SMJUs. If these costs are imposed on out-of-state consumers, the "first-seller" approach would affect out-of-state commerce and, more specifically, intrude upon the regulatory regimes of other states by superseding existing cost and rate structures approved by out-of-state utilities commissions. The intentions of the California Legislature are irrelevant if its effects impact commerce "wholly outside of the State's borders." *Id.* Additionally, California rules over-reach if they direct an SMJU on whether it may or may not optimize its out of state generation portfolio to the benefit of its non-California customers. California needs to recognize that other states are developing climate change regulations and that any stance taken by California on out-of-state energy generation may intrude jurisdiction of other states and will merely shift costs to out-of-state consumers rather than produce any net reduction in GHG emissions. Assuming the other SMJU states approve of a proposed portfolio optimization, and there is no guarantee that they would, the other states would be doing so in a manner reflecting their own energy and climate policies.

Thus, the "first-seller" approach, as applied to SMJUs, has the potential to severely impact commerce and the GHG emissions policies in other states. This is precisely the type of extraterritorial impact that the dormant commerce clause prohibits. Before implementing a "first-seller" approach, the Commission needs to carefully assess how SMJUs will be regulated

to avoid these dormant commerce clause issues. The Commission should base the allocations and reporting methodology on the existing cost protocols of SMJUs. The final regulations should also recognize future regulation of GHG emissions by other states, and ensure that California's regulations provide flexibility for SMJU compliance.

Q23. If you believe 100% auctioning to deliverers/first sellers is not required, explain how emission allowances would be allocated to deliverers/first sellers. In doing so, answer the following:

a. How would the amount of emission allowances given to deliverers/first sellers be determined during any particular compliance period?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

b. How would importers that are marketers be treated, e.g., would they receive emission allowance allocations or be required to purchase all their needed emission allowances through auctions? If allocated, using what method?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

c. How would electric service providers be treated?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

d. How would new deliverers/first sellers obtain emission allowances?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

e. Would zero-carbon generators receive emission allowance allocations?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

f. What would be the impact on market performance, prices, and costs to customers of allocating emission allowances to deliverers/first sellers?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

g. What would be the likelihood of windfall profits if some or all emission allowances are allocated to deliverers/first sellers?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

h. How could such a system prevent windfall profits?

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on the questions at this time, but reserves the right to present additional comments at a future time, as necessary.

Q24. With a deliverer/first seller point of regulation, should administrative allocations of emission allowances be made to retail providers for subsequent auctioning to deliverers/first sellers? If so, using what allocation method? Refer to your answers in Section 3.4.1., as appropriate.

PacifiCorp does not support the deliverers/first sellers approach and as such declines to comment on this question at this time, but reserves the right to present additional comments at a future time, as necessary.

Q25. If you recommend allocation of emission allowances to retail providers followed by an auction to deliverers/first sellers, how would such an auction be administered? What kinds of issues would such a system raise? What would be the impact on market performance, prices, and costs to customers?

Please see responses to Questions 5, 9, 11, 15, and 21. PacifiCorp does not support the deliverers/first sellers approach. If the Commission recommends an allowance distribution method that transitions over time from the grandfathering method to the auction method, PacifiCorp would support a gradual phase-in of the auction method, but limiting participants to regulated retail providers (or joint operating agencies of community-owned utilities) only.

Questions 26-27.

PacifiCorp respectfully declines to respond to Q26 and Q27, since they are germane to the natural gas sector.

III. CONCLUSION

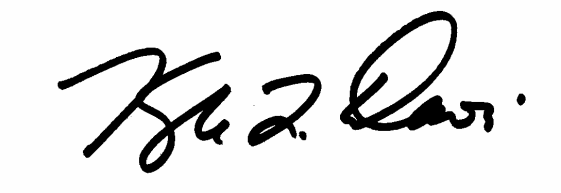
PacifiCorp appreciates the opportunity to comment on issues related to the distribution of GHG emission allowances. For all the foregoing reasons, PacifiCorp recommends that the Joint Staff consider developing an allowance distribution method for SMJUs and their

unique circumstances.

Dated: October 31, 2007

Respectfully submitted,

By



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CERTIFICATE OF SERVICE

I, Lisa Vieland, certify that I have on this 31st day of October 2007 caused a copy of the foregoing

COMMENTS OF PACIFICORP (U 901 E) ON ISSUES RELATED TO THE DISTRIBUTION OF GREENHOUSE GAS (GHG) EMISSIONS ALLOWANCES

to be served on all known parties to R.06-04-009 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of October 2007 at San Francisco, California.

/s/ Lisa Vieland
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